



SECTION 42 APPLICATION (17/00650/S42) TO AMEND CONDITION 4, TO CHANGE THE PROCESS BY WHICH THE MASTERPLAN CAN BE AMENDED, IMPOSED ON A GRANT OF OUTLINE PLANNING PERMISSION (02/00660/OUT) FOR RESIDENTIAL, INDUSTRIAL AND COMMERCIAL FLOOR SPACE, COMMUNITY FACILITIES (INCLUDING NEW PRIMARY SCHOOLS), ASSOCIATED LANDSCAPING WITH THE PROVISION FOR SPORT AND RECREATION AND NEW TRANSPORT FACILITIES AT LAND BOUNDED BY A720, OLD DALKEITH ROAD AND THE WISP, MILLERHILL.

Report by Head of Communities and Economy

1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION

- 1.1 In August 2014 outline planning permission 02/00660/OUT was granted for residential, industrial and commercial floor space, community facilities (including new primary schools), associated landscaping with the provision for sport and recreation and new transport facilities at land bounded by A720, Old Dalkeith Road and The Wisp, Millerhill. This application seeks planning permission to amend condition 4 of outline planning permission 02/00660/OUT to enable the approved masterplan to be amended by way of a matters specified in condition application rather than being updated as part of a planning application process for development outwith the scope of the 02/00660/OUT permission. There has been one representation and no consultations were required.**
- 1.2 The relevant development plan policies are policies 5 and 7 of the Edinburgh and South East Scotland Strategic Development Plan 2013 (SESplan) and policies STRAT1, STRAT3, DEV2, DEV3, DEV5, DEV6, DEV7, DEV9, ECON1, TRAN1, TRAN2, TRAN5, IT1, TCR1, ENV2, ENV7, ENV9, ENV10, ENV11, ENV15, ENV24, ENV25, NRG6, IMP1, IMP2 and IMP3 of the Midlothian Local Development Plan 2017.**
- 1.3 The recommendation is to grant planning permission subject to conditions and the applicant entering into a Planning Obligation to secure contributions towards necessary infrastructure and the provision of affordable housing.**

2 LOCATION AND SITE DESCRIPTION

- 2.1 The application site extends from the boundary with the City of Edinburgh Council at Newcraighall to the north to the A720 Edinburgh City Bypass in the south; and from the Millerhill Marshalling Yard in the east to The Wisp/Old Dalkeith Road to the west. The site encompasses the existing settlements of Danderhall, Millerhill and Newton Village.
- 2.2 The site comprises housing sites h43 (Shawfair), h44 (North Danderhall) and h45 (South Danderhall) and employment sites e25 (Millerhill Marshalling Yards), e26 (Whitehill Mains), e27 (Shawfair Business Park) and e28 (Hunter's Yard) allocated in the 2003 Shawfair Local Plan (site e27 was extended in the 2008 Midlothian Local Plan) with continued commitment in the Midlothian Local Development Plan 2017. Part of the economic allocation (the Shawfair Business Park at Todhills) was subsequently granted planning permission and a number of commercial and associated developments including offices, hospital, pub/restaurant and a park and ride facility have been developed. Furthermore a number of housing plots have been granted detailed planning permission and residential development at Millerhill and Danderhall has commenced.
- 2.3 The Borders Railway runs through the site and a new railway station has been built in the centre of the Shawfair new settlement.
- 2.4 The site is approximately 705 hectares of which approximately 141 hectares would comprise development as a result of this application. A further 830 residential units at Cauldcoats (350 units) and Newton Farm (480 units) and 20 hectares of employment land at Shawfair Business Park has been allocated in the Midlothian Local Development Plan 2017 for development. These development sites are outwith the scope of this application.

3 PROPOSAL

- 3.1 The application, made under Section 42 of the Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc. (Scotland) Act 2006 (hereafter referred to as the Act), is to change the process by which the Shawfair Masterplan can be amended.
- 3.2 A Section 42 application, is in itself a planning application - a particular kind of planning application for development without complying with a condition/s previously imposed on an earlier grant of planning permission. A grant of planning permission under Section 42 results in an entirely new planning permission which will supersede the original permission if implemented. Therefore if planning permission is granted for this application it will supersede planning consent 02/00660/OUT if implemented. It will therefore be a planning permission for residential, industrial and commercial floor space, community facilities (including

new primary schools), associated landscaping with the provision for sport and recreation and new transport facilities.

- 3.3 Although a Section 42 application is a new planning application in law the Act states *“on such an application the planning authority shall consider only the question of the conditions subject to which planning permission should be granted”*. The principle, layout and form of development are not subject to assessment. However, as a new planning application it shall be subject to a new/amended legal agreement to secure developer contributions.

- 3.4 Condition 4 of outline planning permission 02/00660/OUT states:

“The development shall accord with the terms of the Master Plan and Design Guide (and the associated addendums) approved as Supplementary Planning Guidance. Where significant changes are proposed to the development and a planning application is required, the planning application shall be accompanied by the required amendment to the Master Plan and Design Guide and the justification for the change.”

- 3.5 The proposed replacement condition is:

“The development shall accord with the terms of the Masterplan (reference SEW/PS/SK01, dated January 2015) and Design Guide (and associated addendums) approved as Supplementary Planning guidance. Any significant changes to the Masterplan shall be made by way of an application for approval of matters specified in condition which shall be submitted for the approval of the planning authority.”

- 3.6 Although the applicant is seeking to amend condition 4, it is within the planning authority's scope to review/update the other planning conditions attached to planning permission 02/00660/OUT.

4 BACKGROUND

- 4.1 Outline planning Application 02/00660/OUT for residential, industrial and commercial floor space, community facilities (including new primary schools), associated landscaping with the provision for sport and recreation and new transport facilities at land bounded by A720, Old Dalkeith Road and The Wisp, Millerhill was granted permission in August 2014.
- 4.2 Planning Application 04/00417/FUL for the erection of 165 dwellinghouses and associated works at Millerhill Development Phase 1, Old Craighall Road, Millerhill was granted permission in July 2015.
- 4.3 Planning Application 14/00749/DPP for the formation of SUDS, formation of access roads and erection of electric substation at land adjacent Millerhill Park, Millerhill was granted permission in March 2017.

- 4.4 Matters Specified in Conditions Application 15/00089/MSC to discharge conditions regarding the formation of SUDS , landscaping and highway works attached to planning permission 02/00660/OUT relating to land bounded by A720, Old Dalkeith Road and The Wisp, Millerhill was granted permission in November 2016.
- 4.5 Planning Application 16/00140/DPP for the erection of 16 dwellinghouses and 6 flatted dwellings and associated works at land at Millerhill was granted permission in May 2017.
- 4.6 Matters Specified in Conditions Application 16/00410/MSC to discharge conditions regarding the upgrading of access roads attached to planning permission 02/00660/OUT relating to Newton Church Road, Danderhall was granted permission in April 2017.
- 4.7 Matters Specified in Conditions Application 16/00411/MSC to discharge conditions regarding the formation of SUDS and landscaping attached to planning permission 02/00660/OUT relating to land at Old Dalkeith Road, Newton Church Road and Millerhill Road, Danderhall was granted permission in April 2017.
- 4.8 Matters Specified in Conditions Application 16/00673/MSC to discharge conditions regarding the erection of 235 dwellings attached to planning permission 02/00660/OUT relating to Danderhall Sites C and D, Newton Church Road, Danderhall was granted permission in June 2017.
- 4.9 Matters Specified in Conditions Application 16/00818/MSC to discharge conditions regarding the erection of 122 dwellings attached to planning permission 02/00660/OUT relating to Danderhall Site B, Newton Church Road, Danderhall was granted permission in October 2017.
- 4.10 Matters Specified in Conditions Application 16/00901/MSC to discharge conditions regarding the formation of access roads attached to planning permission 02/00660/OUT relating to Shawfair Site S, Millerhill was granted permission in November 2017.
- 4.11 Matters Specified in Conditions Application 17/00858/MSC to discharge conditions regarding the erection of 243 dwellings attached to planning permission 02/00660/OUT relating to Millerhill Development Phase 2 land south east of Old Craighall Road, Millerhill is subject to assessment.
- 4.12 Pre Application Consultation 17/00859/PAC regarding the use of Shawfair Site F, Monktonhall Colliery Road, Dalkeith for the storage of soil was reported to the Committee at its meeting in February 2017. The Committee's without prejudice comments will be considered as part of any subsequent planning application.

- 4.13 Matters Specified in Conditions Application 18/00018/MSC to discharge conditions regarding the formation of access roads attached to planning permission 02/00660/OUT relating to Shawfair Site S, Millerhill is subject to assessment.
- 4.14 In addition to those applications set out above there has been applications relating to the redevelopment of the Millerhill Marshalling Yards, the development of the Shawfair Business Park, the development of the railway, the Zero Waste facility and other developments outwith the original Shawfair development concept as approved by application 02/00660/OUT.

5 CONSULTATIONS

- 5.1 No consultations were required because the application relates to a proposal to amend a condition on a grant of planning permission to change the process by which a masterplan and design guide can be amended.

6 REPRESENTATIONS

- 6.1 One representation objecting to the application has been received. The objection is concerned that if the Section 42 application is granted planning permission the masterplan could be amended without appropriate scrutiny. Furthermore the change in process is not justified, is not good practice, can cause confusion and is inappropriate.

7 PLANNING POLICY

- 7.1 The development plan is comprised of the Edinburgh and South East Scotland Strategic Development Plan (June 2013) and the Midlothian Local Development Plan 2017 (MLDP). The following policies are relevant to the proposal:

Edinburgh South East Scotland Strategic Development Plan 2013 (SESPPlan)

- 7.2 **Policy 5** (HOUSING LAND) requires Local Development Plans to allocate sufficient land for housing which is capable of becoming effective in delivering the scale of the housing requirements for each period.
- 7.3 **Policy 7** (MAINTAINING A FIVE YEAR HOUSING LAND SUPPLY) states that sites for Greenfield housing development proposals either within or outwith the identified Strategic Development Areas may be allocated in Local Development Plans or granted planning permission to maintain a five years' effective housing land supply, subject to satisfying each of the following criteria: (a) The development will be in keeping with the character of the settlement and local area; (b) The development will not undermine Green Belt objectives; and (c) Any

additional infrastructure required as a result of the development is either committed or to be funded by the developer.

Midlothian Local Development Plan 2017 (MLDP)

- 7.4 Policy **STRAT 1: Committed Development** seeks the early implementation of all committed development sites and related infrastructure, facilities and affordable housing, including sites in the established housing land supply. Committed development includes those sites allocated in previous development plans which are continued in the MLDP.
- 7.5 Policy **STRAT3: Strategic Housing Land Allocations** states that strategic land allocations identified in the plan will be supported provided they accord with all other policies. The development strategy supports the provision of an indicative 3,990 housing units on the sites h43 (Shawfair), h44 (North Danderhall) and h45 (South Danderhall).
- 7.6 Policy **DEV2: Protecting Amenity within the Built-Up Area** states that development will not be permitted where it would have an adverse impact on the character or amenity of a built-up area.
- 7.7 Policy **DEV3: Affordable and Specialist Housing** seeks an affordable housing contribution of 25% from sites allocated in the MLDP. Providing lower levels of affordable housing requirement may be acceptable where this has been fully justified to the Council. This policy supersedes previous local plan provisions for affordable housing; for sites allocated in the Midlothian Local Plan (2003) that do not benefit from planning permission, the Council will require reasoned justification in relation to current housing needs as to why a 25% affordable housing requirement should not apply to the site.
- 7.8 Policy **DEV5: Sustainability in New Development** sets out the requirements for development with regards to sustainability principles.
- 7.9 Policy **DEV6: Layout and Design of New Development** sets out design guidance for new developments.
- 7.10 Policy **DEV7: Landscaping in New Development** sets out the requirements for landscaping in new developments.
- 7.11 Policy **DEV9: Open Space Standards** sets out the necessary open space for new developments. This policy requires that the Council assess applications for new development against the open space standards as set out in Appendix 4 of that Plan and seeks an appropriate solution where there is an identified deficiency in any of the listed categories (quality, quantity and accessibility). Supplementary Guidance on open space standards is to be brought forward during the lifetime of the plan.

- 7.12 Policy **ECON1: Existing Employment Locations** seeks to safeguard those sites allocated for economic land uses.
- 7.13 Policy **TRAN1: Sustainable Travel** aims to encourage sustainable modes of travel.
- 7.14 Policy **TRAN2: Transport Network Interventions** highlights the various transport interventions required across the Council area, including the A701 realignment.
- 7.15 Policy **TRAN5: Electric Vehicle Charging** seeks to promote a network of electric vehicle charging stations by requiring provision to be an integral part of any new development.
- 7.16 Policy **IT1: Digital Infrastructure** supports the incorporation of high speed broadband connections and other digital technologies into new homes.
- 7.17 Policy **TCR1: Town Centres** supports proposals for retail, commercial leisure development or other uses which will attract significant numbers of people in Midlothian's town centres, provided their scale and function is consistent with the town centre's role. In support of this policy the Council will prepare supplementary guidance on food and drink and other non-retail uses in town centres; this guidance will also include guidance in respect of food and drink and hot food takeaways outwith town centres. The guidance is currently being prepared by the Council.
- 7.18 Policy **ENV2 Midlothian Green Networks** supports development proposals brought forward in line with the provisions of the Plan that help to deliver the green network opportunities identified in the Supplementary Guidance on the *Midlothian Green Network*.
- 7.19 Policy **ENV7: Landscape Character** states that development will not be permitted where it significantly and adversely affects local landscape character. Where development is acceptable, it should respect such character and be compatible in terms of scale, siting and design. New development will normally be required to incorporate proposals to maintain the diversity and distinctiveness of the local landscapes and to enhance landscape characteristics where they have been weakened.
- 7.20 Policy **ENV9: Flooding** presumes against development which would be at unacceptable risk of flooding or would increase the risk of flooding elsewhere. It states that Flood Risk Assessments will be required for most forms of development in areas of medium to high risk, but may also be required at other locations depending on the circumstances of the proposed development. Furthermore it states that Sustainable urban drainage systems will be required for most forms of development,

so that surface water run-off rates are not greater than in the site's pre-developed condition, and to avoid any deterioration of water quality.

- 7.21 **Policy ENV10: Water Environment** requires that new development pass surface water through a sustainable urban drainage system (SUDS) to mitigate against local flooding and to enhance biodiversity and the environment.
- 7.22 **Policy ENV11: Woodland, Trees and Hedges** states that development will not be permitted where it could lead directly or indirectly to the loss of, or damage to, woodland, groups of trees (including trees covered by a Tree Preservation Order, areas defined as ancient or semi-natural woodland, veteran trees or areas forming part of any designated landscape) and hedges which have a particular amenity, nature conservation, biodiversity, recreation, landscape, shelter, cultural, or historical value or are of other importance.
- 7.23 **Policy ENV15: Species and Habitat Protection and Enhancement** presumes against development that would affect a species protected by European or UK law.
- 7.24 **Policy ENV24: Other Important Archaeological or Historic Sites** seeks to prevent development that would adversely affect regionally or locally important archaeological or historic sites, or their setting.
- 7.25 **Policy ENV25: Site Assessment, Evaluation and Recording** requires that where development could affect an identified site of archaeological importance, the applicant will be required to provide an assessment of the archaeological value of the site and of the likely impact of the proposal on the archaeological resource.
- 7.26 **Policy NRG6: Community Heating** seeks to ensure developments deliver, contribute towards or enable the provision of community heating schemes.
- 7.27 **Policy IMP1: New Development.** This policy ensures that appropriate provision is made for a need which arises from new development. Of relevance in this case are education provision, transport infrastructure; contributions towards community and leisure facilities; affordable housing; landscaping; public transport connections, including bus stops and shelters; parking in accordance with approved standards; cycling access and facilities; pedestrian access; acceptable alternative access routes, access for people with mobility issues; traffic and environmental management issues; protection/management/compensation for natural and conservation interests affected; archaeological provision and 'percent for art' provision.
- 7.28 **Policy IMP2: Essential Infrastructure Required to Enable New Development to Take Place** states that new development will not take

place until provision has been made for essential infrastructure and environmental and community facility related to the scale and impact of the proposal. Planning conditions will be applied and; where appropriate, developer contributions and other legal agreements will be used to secure the appropriate developer funding and ensure the proper phasing of development.

- 7.29 Policy **IMP3: Water and Drainage** require sustainable urban drainage systems (SUDS) to be incorporated into new development.

National Policy

- 7.30 The **SPP (Scottish Planning Policy)** sets out Government guidance for housing. All proposals should respect the scale, form and density of their surroundings and enhance the character and amenity of the locality. The individual and cumulative effects of infill must be sustainable in relation to the social and economic infrastructure of a place, and must not lead to over-development.

- 7.31 The SPP encourages a design-led approach in order to create high quality places. It states that a development should demonstrate six qualities to be considered high quality, as such a development should be; distinctive; safe and pleasant; welcoming; adaptable; resource efficient; and, easy to move around and beyond. The aims of the SPP are developed within the local plan and local development plan policies.

- 7.32 The SPP states that *design is a material consideration in determining planning applications* and that *planning permission may be refused and the refusal defended at appeal or local review solely on design grounds*.

- 7.33 The SPP supports the Scottish Government's aspiration to create a low carbon economy by increasing the supply of energy and heat from renewable technologies and to reduce emissions and energy use. Part of this includes a requirement to guide development to appropriate locations.

- 7.34 The SPP notes that "high quality electronic communications infrastructure is an essential component of economic growth across Scotland". It goes on to state that

"Planning Authorities should support the expansion of the electronic communications network, including telecommunications, broadband and digital infrastructure, through the development plan and development management decisions, taking into account the economic and social implications of not having full coverage or capacity in an area".

- 7.35 The Scottish Government policy statement, **Creating Places**, emphasises the importance of quality design in delivering good places.

- 7.36 **Designing Places, A Policy Statement for Scotland** sets out the six key qualities which are at the heart of good design namely identity, safe and pleasant environment, ease of movement, a sense of welcome, adaptability and good use of resources.
- 7.37 **The Scottish Government's Policy on Architecture for Scotland** sets out a commitment to raising the quality of architecture and design.

8 PLANNING ISSUES

- 8.1 The main issue to be determined is whether the proposal accords with the development plan, unless material planning considerations indicate otherwise. The representation response received is a material considerations.

The Principle of Development

- 8.2 The site is allocated as a new settlement which includes housing, economic development uses, retail and commercial uses associated with a town centre, community facilities (including primary schools), sports facilities and transport infrastructure located within the built up area of Shawfair and Danderhall where there is a presumption in favour of appropriate development. The principle of a mixed use development on this site was first established by its allocation as a new settlement and extension to Danderhall including housing (3990 units) and economic development (30 hectares) within the now superseded 2003 Shawfair Local Plan. The now superseded 2008 Midlothian Local Plan continues the commitment to the mixed use development
- 8.3 The subsequent grant of planning permission in principle (02/00660/OUT) for residential, industrial and commercial floor space, community facilities (including new primary schools), associated landscaping with the provision for sport and recreation and new transport facilities and other detailed planning permissions (as set out in the background section of this report) reaffirmed the principle of a mixed use development across the application site. The development has commenced in terms of the provision of railway infrastructure the partial development of the Shawfair Business Park and housing development commencing at Millerhill and Danderhall.
- 8.4 The MLDP continues the commitment to the mixed use development and confirms 3,990 residential units and 30 hectares of economic land with additional allocations of 830 residential units and 20 hectares of employment land.

Proposed Process Change Amendments to Condition 4

- 8.5 Application 02/00660/OUT includes condition 4 which states:

“The development shall accord with the terms of the Master Plan and Design Guide (and the associated addendums) approved as Supplementary Planning Guidance. Where significant changes are proposed to the development and a planning application is required, the planning application shall be accompanied by the required amendment to the Master Plan and Design Guide and the justification for the change.”

This condition has three requirements;

- a. the first is that the development accords with the terms of the masterplan and design guide;
- b. the second is that the masterplan and design guide is updated if a planning application (this excludes matters specified in conditions applications) is required for development outwith the scope of the 02/00660/OUT permission; and
- c. the third requirement is that changes to the masterplan and design guide are justified.

8.6 The proposed amendment is:

“The development shall accord with the terms of the Masterplan (reference SEW/PS/SK01, dated January 2015) and Design Guide (and associated addendums) approved as Supplementary Planning guidance. Any significant changes to the Masterplan shall be made by way of an application for approval of matters specified in condition which shall be submitted for the approval of the planning authority.”

This condition has two requirements;

- a. the first is that the development accords with the terms of the masterplan and design guide; and
- b. the second is that any significant changes to the masterplan are done so by way of matters specified in conditions applications.

8.7 The proposed amendment does not seek to change the requirement that the development accords with the masterplan and design guide. The applicant is seeking a means in which the masterplan (not the design guide) can be amended by means of a matters specified in conditions application rather than a planning application (which may require a 12 week pre consultation process). Matters specified in conditions applications require assessment by the planning authority and includes neighbour notification and consultation processes, but it is not subject to the statutory 12 week pre application consultation that major applications are required to undertake – however this does not preclude the Council from wider community engagement if it wishes to do so. Any changes to the masterplan can be justified as part of any matters specified in conditions application.

8.8 The proposed process change does not disadvantage the planning authority as it still has the means to assess and determine any proposed changes to the masterplan and to engage with communities as appropriate. However the proposed change does enable changes

to be made without the perceived '12 week delay' of a pre application consultation which would apply to amendments to the masterplan even if they were relatively small changes.

- 8.9 The application makes reference to "... of the Masterplan (reference SEW/PS/SK01, dated January 2015) ..." The masterplan was approved by the Planning Committee at its meeting of June 2007 subject to minor amendments being agreed by way of an addendum which was subsequently submitted 18 December 2007. This is the approved masterplan and as such the proposed new condition 4 would be amended for clarification. Drawing SEW/PS/SK01 is the location plan submitted with the application.
- 8.10 Proposed developments outwith the scope of planning application 02/00660/OUT, (to be superseded by this application, 17/00650/S42, if approved and implemented) such as the erection of a secondary school, will require a planning application which will be subject to assessment in accordance with the Act and the MLDP – the Section 42 application subject to assessment does not change this position. The applicant has submitted an indicative plan showing that additional housing land will be required in Woolmet Park to compensate for the loss of housing land in the Shawfair town centre to deliver the anticipated secondary school campus. However, in the context of this application, this plan can only be considered as indicative and as such is not subject to detailed assessment as part of this application.

Layout and Design

- 8.11 Although the application is a Section 42 application it is in effect a planning application in principle. This means that the detailed layout, form and design of the development would be subject to further applications (matters specified in conditions) and assessment if the proposal is granted planning permission. In this case conditions would be imposed requiring the following details to be submitted by way of an application for the individual development phases:
- layout, form and design of any proposed buildings;
 - the use of buildings within the town centre, neighbourhood centres and commercial areas;
 - proposed materials to be used in the construction of the dwellinghouses, ground surfaces and ancillary structures – including those to be used in the area of improved quality (which would be the provision for the whole site);
 - details of landscaping and boundary treatments;
 - provision of open space and play areas/facilities;
 - percent for art;
 - sustainable urban drainage systems;
 - details of road, access and transportation infrastructure;
 - sustainability and biodiversity details;
 - archaeology mitigation details; and
 - the provision of broadband infrastructure.

- 8.12 The development strategy as set out in the masterplan and design guide still applies and will form the basis of assessment with regard future matters specified in conditions applications. Proposed developments contrary to the masterplan and design guide or outwith the development areas identified cannot be considered by way of matters specified in condition application without prior amendment of the masterplan (by way of a matters specified in condition application). In effect there is a two-step process to amend the form of the development, the first is to amend the master plan (by way of a matters specified in condition application) and the second is to propose an alternative form of development (by way of a matters specified in condition application). Alternatively a detailed planning application could be submitted. The masterplan and design guide were adopted as Supplementary Planning Guidance by the Planning Committee at its meeting of 7 June 2007.

Requirement for a new Planning Obligation

- 8.13 The 02/00660/OUT grant of planning permission was subject to a Section 75 legal agreement (S75) to; secure developer contributions towards primary education, secondary education, the Borders Railway, community facilities, the redevelopment of the Sherrifhall roundabout and public transport and the provision of affordable housing. It is proposed to require an amended legal agreement to ensure the agreed financial position is protected.
- 8.14 Although the application is a 'Section 42 application' it is a planning application which has to be assessed in accordance with Section 37(2) of the Town and Country Planning (Scotland) Act (1997), which states "in dealing with such an application the authority shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations".
- 8.15 The appropriate procedural requirements are set out in Circular 3/2013: Development Management Procedures which confirms that a Section 42 is a new permission and that if permission is granted it should be subject to the conclusion of any appropriate planning obligation to secure developer contributions.
- 8.16 Although the MLDP was adopted after the original grant of planning permission for the site (02/00660/OUT) it does form the basis of the assessment of the current application. This is relevant to certain matters; in particular Policy DEV 3 of the new MLDP requires that a 25% affordable housing provision is made from residential development sites. However, the current agreement secured a 20% affordable housing requirement as required by the 2003 Shawfair Local Plan and the applicants have stated that the development cannot sustain any uplift in this, or other requirements from the original agreement. Accordingly, on the understanding that the application was submitted to secure an alternative method of amending the masterplan,

it is not considered appropriate to use this opportunity to place additional burdens on the development, as this could threaten its overall economic viability, and implementation of the approved development programme at Shawfair.

Conditions

- 8.17 Since the grant of planning permission 02/00660/OUT in August 2014 the Council has adopted a new development plan and development has commenced across the site and as such it is appropriate for the local planning authority to update the conditions associated with the proposed development.

9 RECOMMENDATION

- 9.1 It is recommended that planning permission be granted for the following reasons:

The proposed mixed use development site is identified as being part of the Council's safeguarded/committed housing and economic land supply within the Midlothian Local Development Plan 2017 and as such there is a presumption in favour of the proposed development. This presumption in favour of development is not outweighed by any other material considerations.

Subject to:

- i) the prior signing of a legal agreement to secure the provision of affordable housing and contributions towards education provision, strategic transport infrastructure including Borders Rail, public transport and community and leisure facilities. The legal agreement shall be concluded within six months. If the agreement is not concluded timeously the application will be refused.
- ii) the following conditions:

Strategic conditions covering the whole site

1. No more than 3990 dwellings shall be erected on the site unless approved by the grant of a planning application.

Reason: *The application has been assessed on the basis of a maximum of 3990 dwellings being built on the site. Any additional dwellings would have a further impact on local infrastructure, in particular education provision, and additional mitigation measures may be required. Any such measures would need further assessment by way of a planning application.*

2. Prior to the commencement of development on any development block identified in the masterplan not already approved in detail (by way of a detailed planning application or matters specified in

condition application) the local planning authority shall be advised in writing that this planning permission (17/00650/S42) is being implemented, thereby superseding application 02/00660/OUT.

Reason: *To ensure the applicant and the local planning authority are in agreement which planning permission is being implemented.*

3. In the January of each year, until the development is completed, an updated phasing plan shall be submitted to and approved in writing by the planning authority. The phasing plan shall include the construction of each phase of the development, the provision of affordable housing, the provision of open space, structural landscaping, SUDS provision, transportation infrastructure, areas of improved quality (critical development zones) and percent for art. The plan shall clarify those phases of development completed, under construction and those phases of development scheduled to commence within 5 years of the submitted phasing plan. Development shall thereafter be carried out in accordance with the approved phasing unless agreed in writing with the planning authority.

Reason: *To enable the timeous delivery of infrastructure and services to meet the needs of occupants and future occupants of the development.*

4. The development shall accord with the terms of the approved Masterplan and Design Guide (and associated addendums) approved as Supplementary Planning Guidance. Any significant changes to the Masterplan shall be made by way of an application for approval of matters specified in condition which shall be submitted for the approval of the planning authority.

Reason: *To ensure the development complies with the development plan, national planning advice and guidance and good place making principals.*

5. Within 12 months, unless an alternative time period is agreed with the planning authority, from this grant of planning permission the scope and feasibility of a community heating scheme for the development hereby approved and; if practicable, other neighbouring developments/sites, in accordance with policy NRG6 of the Midlothian Local Development Plan 2017, shall be submitted for the prior written approval of the planning authority. Any structures, buildings or engineering works required to implement an approved scheme shall require a matters specified in conditions application.

Reason: *To ensure the provision of a community heating system to accord with the requirements of policy NRG6 of Midlothian Local Development Plan 2017 and in order to promote sustainable development.*

6. The Structure landscaping (incorporating associated footpaths and cyclepaths) identified on plan titled Landscape Phasing (reference number 343400060227-Phasing Revision 02) and detailed in the approved Design Guide for Shawfair shall be carried out in accordance with the timing identified in the following table, unless otherwise agreed in writing with the planning authority:

Landscape Area	Time Period for Provision
L04 and L05	Within 9 months from the date of this planning permission.
L06	Within 9 months from the date of this planning permission.
L07	Within 9 months from the date of this planning permission.
L08	Within 9 months from the date of this planning permission.
L9a, L10, L11a and L11b	Within 9 months from the date of this planning permission.
L12 and L23	Within 9 months from the date of this planning permission.
L13a and b	Within 9 months from the date of this planning permission.
L14a, L14b, L15, L16, L17 and L18	Within 9 months of commencement of development of any dwelling unit or building on sites A, E, F, B, G, H or within the town centre as defined in the Shawfair Masterplan, whichever is the earlier.
L19	Within 9 months of commencement of construction of SUDs pond/basin RT6.
L20	Within 9 months from the date of this planning permission.
L21 and L26a to L26g	Within 9 months of the commencement of development on Whitehills area A2, B2, C2, D2, E2, F2, or G2.
L25a	Within 9 months of the commencement of the construction of SUDs pond/basin RT5a.
L24a	Within 9 months (with the exception of the area outlined hatched purple on the plan referred to in this condition)
L25b	Within 9 months of the commencement of the construction of SUDs pond/basin RT5b.
L27	Within 9 months of the commencement of construction of the SUDs ponds/basins RT4d.

The landscaping shall be carried out in accordance with the approved Shawfair Design Guide unless otherwise agreed in writing by the Planning Authority. Footpaths as shown within the Design Guide located within the structure landscaping shall be

provided at the same time as the planting is provided. The footpaths shall be constructed to adoptable standard, unless otherwise agreed in writing by the Planning Authority.

Reason: *To ensure the Structural Landscaping is carried out timeously and provides a good quality landscape setting for the new development and its residents. The landscaping and footpaths make a valuable contribution to the creation of quality places as well as encouraging walking and cycling.*

Conditions relating to each development block identified in the masterplan

7. A valid application for approval of matters specified in conditions shall be submitted to the planning authority before the expiration of either:
 - I. twenty five (25) years from the date of this grant of permission,
 - II. six (6) months from the date on which an earlier application, for the same development block, for approval under this condition was refused, or
 - III. six (6) months from the date on which an appeal or review against such a refusal was determined.

Reason: *To accord with Section 59(5) of the Town and Country Planning (Scotland) Act 1997 and to allow sufficient time for this development to be implemented.*

8. Development shall not begin on an individual phase of development (identified in compliance with condition 3 and the masterplan) or part thereof until an application for approval of matters specified in conditions for a scheme of hard and soft landscaping works and open space has been submitted to and approved in writing by the planning authority. Details of the scheme shall include:
 - i existing and finished ground levels and floor levels for all buildings and roads in relation to a fixed datum;
 - ii existing trees, landscaping features and vegetation to be retained; removed, protected during development and in the case of damage, restored;
 - iii proposed new planting in communal areas, open space and sports pitch provision, including trees, shrubs, hedging and grassed areas;
 - iv location and design of any proposed walls, fences and gates, including those surrounding bin stores or any other ancillary structures;
 - v schedule of plants to comprise species, plant sizes and proposed numbers/density;
 - vi programme for completion and subsequent maintenance of all soft and hard landscaping. The landscaping in the open

- spaces shall be completed prior to the buildings (either residential or commercial) on adjoining plots are occupied;
- vii drainage details and sustainable urban drainage systems to manage water runoff;
 - viii proposed car park configuration and surfacing;
 - ix proposed footpaths and cycle paths (designed to be unsuitable for motor bike use);
 - x any proposed play areas and/or sports equipment;
 - xi proposed cycle parking facilities; and
 - xii proposed pieces of public art and/or sculpture (percent for art).

All hard and soft landscaping and open space shall be carried out in accordance with the scheme approved in writing by the planning authority as the programme for completion and subsequent maintenance (vi). Thereafter any trees or shrubs removed, dying, becoming seriously diseased or damaged within five years of planting shall be replaced in the following planting season by trees/shrubs of a similar species to those originally required.

Reason: *To ensure the quality of the development is enhanced by landscaping to reflect its setting in accordance with policies DEV2, DEV5, DEV6, DEV7 and DEV9 of the Midlothian Local Development Plan 2017 and national planning guidance and advice.*

9. Development shall not begin on an individual phase of development (identified in compliance with condition 3 and the masterplan) until an application for approval of matters specified in conditions for the siting, design, use and external appearance of all buildings and other structures has been submitted to and approved in writing by the planning authority. The application shall include samples of materials to be used on external surfaces of the buildings; hard ground cover surfaces; means of enclosure and ancillary structures. These materials will also include those proposed in the areas of improved quality (critical development zones). Development shall thereafter be carried out using the approved materials or such alternatives as may be agreed in writing with the planning authority.

Reason: *To ensure the quality of the development is enhanced by the use of quality materials to reflect its setting in accordance with policies DEV2, DEV5 and DEV6 of the Midlothian Local Development Plan 2017 and national planning guidance and advice.*

10. Development shall not begin on an individual phase of development (identified in compliance with condition 3 and the masterplan) until an application for approval of matters specified in conditions for the site access, roads, footpaths, cycle ways and transportation movements has been submitted to and approved in

writing by the planning authority. Details of the scheme shall include:

- i a programme for completion for the construction of access, roads, footpaths and cycle paths;
- ii existing and finished ground levels for all roads, footways and cycle ways in relation to a fixed datum;
- iii the proposed roads (including turning facilities), footpaths and cycle ways including suitable walking and cycling routes linking the new housing/development with the local primary school/town centre;
- iv proposed visibility splays, traffic calming measures, lighting and signage;
- v proposed construction traffic access and haulage routes;
- vi proposed car parking arrangements;
- vii proposed public transport infrastructure including bus shelters and bus laybys;
- viii a green travel plan designed to promote walking, cycling and the use of public transport.

Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be agreed in writing with the planning authority.

Reason: *To ensure the future users of the buildings, existing local residents and those visiting the development site during the construction process have safe and convenient access to and from the site.*

11. Development shall not begin on an individual phase of development (identified in compliance with condition 3 and the masterplan) until an application for approval of matters specified in conditions for a scheme to deal with any contamination of the site and/or previous mineral workings has been submitted to and approved by the planning authority. The scheme shall contain details of the proposals to deal with any contamination and/or previous mineral workings and include:

- i. the nature, extent and types of contamination and/or previous mineral workings on the site;
- ii measures to treat or remove contamination and/or previous mineral workings to ensure that the site is fit for the uses hereby approved, and that there is no risk to the wider environment from contamination and/or previous mineral workings originating within the site;
- iii measures to deal with contamination and/or previous mineral workings encountered during construction work;
- iv the condition of the site on completion of the specified decontamination measures; and
- v details of how mine water is kept separate to SUDS ponds and wetlands.

Before any part of the site is occupied for residential/commercial purposes, the measures to decontaminate the site shall be fully implemented as approved by the planning authority.

Reason: *To ensure that any contamination on the site is adequately identified and that appropriate decontamination measures are undertaken to mitigate the identified risk to site users and construction workers, built development on the site, landscaped areas, and the wider environment.*

12. Development shall not begin on an individual phase of development (identified in compliance with condition 3 and the masterplan) which has an archaeology evaluation requirement until an application for approval of matters specified in conditions for a programme of archaeological works (field evaluation by trial trenching) has been carried out at the site by a professional archaeologist in accordance with details submitted to and approved in writing by the planning authority. The area to be investigated should be no less than 5% of the total site area with an additional 2% contingency should significant archaeological remains be encountered, unless an alternative is agreed in writing. The phases of development requiring an archaeology submission are agreed in the plan 'Shawfair Archaeology Sites Revision B', dated 11 February 2008.

Reason: *To ensure this development does not result in the unnecessary loss of archaeological material in accordance with policy ENV25 of the Midlothian Local Development Plan 2017.*

13. Development shall not begin on an individual phase of development (identified in compliance with condition 3 and the masterplan) until an application for approval of matters specified in conditions setting out details, including a timetable of implementation, of high speed fibre broadband has been submitted to and approved in writing by the planning authority. The details shall include delivery of high speed fibre broadband prior to the occupation of each dwellinghouse/commercial building. The delivery of high speed fibre broadband shall be implemented as per the approved details.

Reason: *To ensure the quality of the development is enhanced by the provision of appropriate digital infrastructure.*

14. Development shall not begin on an individual phase of development (identified in compliance with condition 3 and the masterplan) until an application for approval of matters specified in conditions for a scheme of sustainability/biodiversity for the site, including the provision of house bricks and boxes for bats and swifts throughout the development has been submitted to and approved in writing by the planning authority. Development

shall thereafter be carried out in accordance with the approved details or such alternatives as may be approved in writing with the planning authority.

Reason: *To ensure the development accords with the requirements of policy DEV5 of the Midlothian Local Development Plan 2017.*

15. Development shall not begin on an individual phase of development (identified in compliance with condition 3 and the masterplan) until an application for approval of matters specified in conditions for the provision and use of electric vehicle charging stations has been submitted to and approved in writing by the planning authority. Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be approved in writing with the planning authority.

Reason: *To ensure the development accords with the requirements of policy TRAN5 of the Midlothian Local Development Plan 2017.*

16. Development shall not begin on an individual phase of development (identified in compliance with condition 3 and the masterplan) until an application for approval of matters specified in conditions for a Construction Environment Management Plan (CEMP) has been submitted to and approved in writing by the planning authority. The CEMP shall include:
 - i. signage for the construction traffic, pedestrians and other users of the site;
 - ii. controls on the arrival and departure times for the construction vehicles and for site workers;
 - iii. details of piling methods (if employed);
 - iv. details of earthworks;
 - v. control of emissions strategy;
 - vi. a dust management plan strategy;
 - vii. waste management and disposal of material strategy;
 - viii. a community liaison representative will be identified to deal with the provision of information on the development to the local community and to deal with any complaints regarding construction on the site;
 - ix. prevention of mud/debris being deposited on the public highway; and
 - x. material and hazardous material storage and removal.

Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be approved in writing with the planning authority.

Reason: *In order to control the construction activity on the site, ensure environmental impact during the construction period is acceptable and to ensure appropriate mitigation is in place.*

17. Development shall not begin on an individual phase of development (identified in compliance with condition 3 and the masterplan) until an application for approval of matters specified in conditions assessing flood risk and its mitigation has been submitted to and approved in writing by the planning authority. Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be approved in writing with the planning authority

Reason: *To address concerns in relation to Flood Risk and to ensure flood risk to the development can be mitigated and the development will not increase the risk of flooding elsewhere.*

18. Construction, engineering, site delivery and any other operations shall only take place between 0800 to 1900hrs Monday to Friday and 0800 to 1300hrs on Saturdays. Any amendment of these hours shall be agreed in writing with the planning authority prior to work taking place outwith the hours stated.

19. Construction, engineering, site delivery and any other operations shall comply with following noise level: 70 dB L_{Aeq}(12hr) (façade), with the best practicable means (BPM) at all times in accordance with BS5228 guidance. All fixed plant/machinery noise shall comply with the following:

Night time (22:00 – 07:00 hrs) NR25 (internal, open window)

Day time (07:00 - 22:00 hrs) - NR30 (internal, open window)

Reason for conditions 18 and 19: *To ensure noise assessment criteria are appropriate to protect residential amenity.*

20. Shawfair Farmhouse and Steading Buildings, Millerhill Farmhouse and the remains of Millerhill Steading Buildings shall be surveyed by a qualified ecologist for roosting bats with emergence surveys being undertaken in mid-summer one year prior to the demolition of each of the said buildings. A report of the survey shall be submitted to and approved by the planning authority prior to the demolition of any of the buildings.

21. Prior to the removal of any tree (i) it shall be surveyed for bat roosts and the presence of bats by a qualified ecologist, and (ii) the results of the survey, including any proposals for mitigation, shall be submitted to and approved by the planning authority in writing. If the survey and any proposed mitigation is approved by the planning authority, the trees shall be felled no more than two months following such an approval. In addition any tree identified for removal shall, prior to its removal, either (i) be removed outwith the bird nesting period, or (ii) be surveyed for nesting birds by a qualified ecologist. The results of the nesting bird survey including any proposed mitigation shall be submitted to and approved by the planning authority in writing. If the survey is approved by the

planning authority the trees shall be removed before the beginning of the bird nesting period following the date of the survey, failing which the trees shall not be removed.

22. The specimen lime, horse chestnut and oak trees immediately adjacent to Shawfair Farmhouse as identified in Bat Survey carried out by Alan F Leitch and dated 11 October 2007, and any other mature trees identified for felling in terms of condition 2(n) shall be felled using a soft felling approach (i.e. limb by limb).
23. Should any bats be encountered or signs of bats found at any stage of tree felling or building demolition work, all works on the tree felling and building demolition shall cease immediately and Scottish Natural Heritage (SNH) shall be contacted for further advice unless SNH have already granted a licence or such other approval as is required for the tree felling or building demolition work which affects or has the potential to affect the bats.,

Reason: for conditions 20 to 23: In the interests of safeguarding bats and nesting birds, which are afforded protection in law and to ensure the development accords with policy ENV15 of the Midlothian Local Development Plan 2017 and national planning guidance and advice.

24. Permitted development under Class 40, section (1) (e) of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 as amended, replaced or superseded by any subsequent regulation is expressly excluded within the site and no electricity substation shall be erected within the site unless details of its position and appearance have been submitted to and approved in writing by the planning authority.

Reason: To ensure that any substation is unobtrusive and not unduly close to any occupied building.

25. Unless otherwise approved in writing by the planning authority there shall be no storage nor industrial activity outwith any buildings erected within the employment areas. Any area so approved for external storage or industrial activity shall only be used for these purposes as an ancillary operation to the lawful use of the building within the same curtilage. All such areas approved in terms of this condition shall be screen fenced so that the operations are not visible from a public area and shall remain screened for the duration of the approved use.,

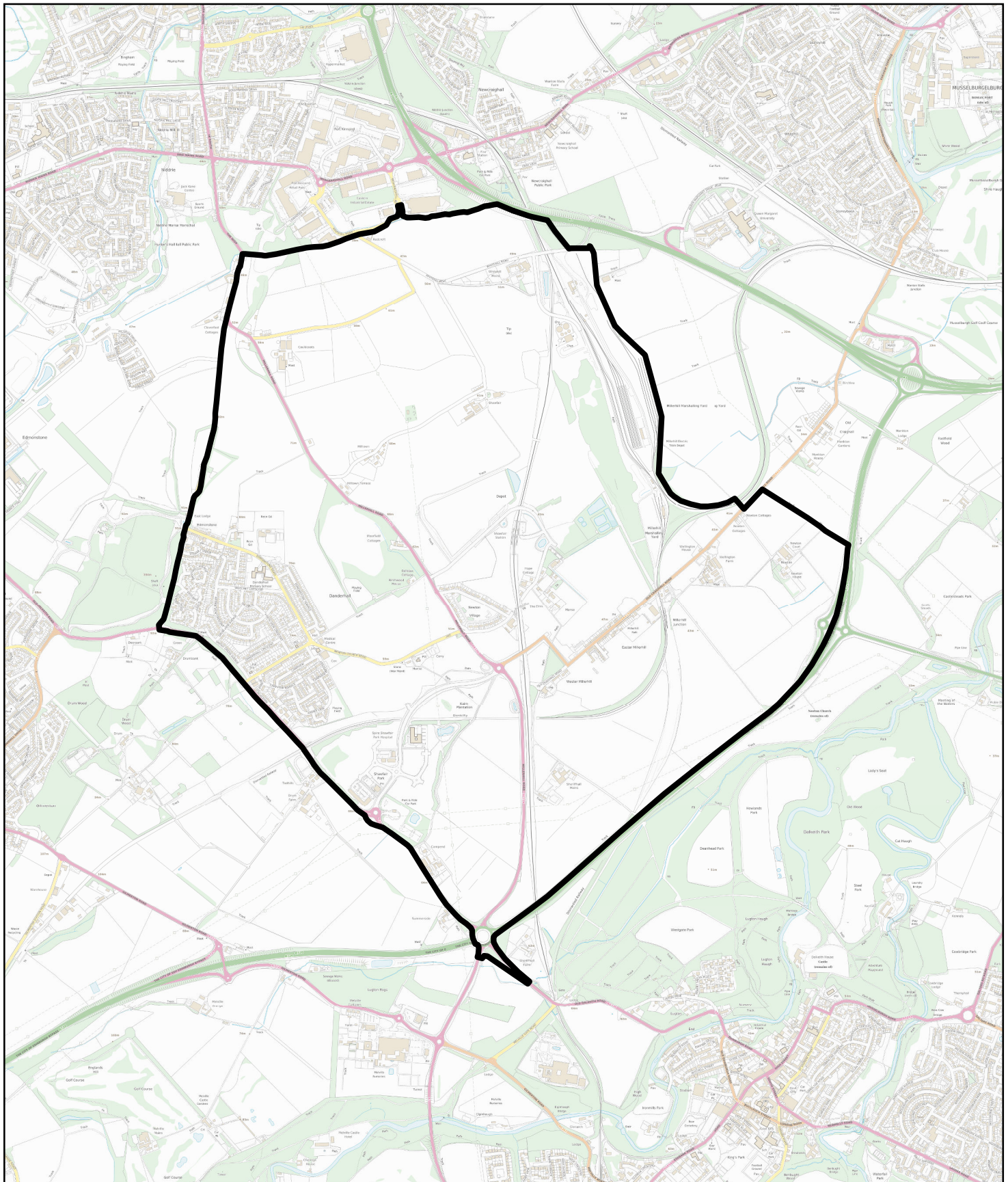
Reason: In the interests of visual amenity.

26. No planning permission is hereby granted for the areas outlined in orange on plan reference number SHAWFAIR 1.

Reason: A legal agreement in terms of section 75 of the Town and Country Planning (Scotland) Act 1997 is attached to the majority of land which is the subject of this planning permission. The legal agreement does not cover the land outlined in orange and development in this area will be subject to further assessment.

Ian Johnson
Head of Communities and Economy

Date:	27 March 2018
Application No:	17/00650/S42
Applicant(s):	Shawfair LLP
Validation Date:	16 August 2017
Contact Person:	Peter Arnsdorf
Tel No:	0131 271 3310
Background Papers:	Planning Application 02/00660/OUT



**Education, Economy
& Communities**
Midlothian Council
Fairfield House
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EH22 3AA

Section 42 application to amend condition 4 of planning permission 02/00660/OUT. This application seeks to change the means by which the Master Plan and Design Guide (and related addenda) for Shawfair can be amended, at Land Bounded By A720 Old Dalkeith Road And The Wisp, Millerhill, Dalkeith

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File No. 17/00650/S42

Scale: 1:25,000

